IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2265 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIPKUMAR RAVJIBHAI DABHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2265 of 2002

MR TS NANAVATI for Petitioner No. 1

MR MK DAGLI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 25/04/2003

ORAL JUDGEMENT

#. Rule. Mr.Dagli, learned AGP, waives service of rule for the respondents. With the consent of the parties,

the matter is taken up for final hearing today.

#. The father of the petitioner was serving in the Police Department. While he was in service he died on 14.10.1999. The petitioner, thereafter, applied for getting compassionate appointment. However, the State Government rejected the application by order dated 28.8.2001 on the ground that income of the family of the deceased is more than the stipulated limit of Rs.2500/-. While computing the said income, pensionary benefit which is available to the family of the deceased is also taken into consideration.

#. On behalf of the petitioner, Mr.Shelat submitted that as per the decision of this Court in Special Civil Application No. 11020 of 1993, pensionary benefits are not required to be taken into consideration. He further submitted that, in any case, as per the Government Resolution dated 7.9.2002 income criterion is given a go-by, and, therefore, it is not necessary to consider the income part. He submitted that the income criterion is taken away with effect from 1996 and the father of the petitioner died thereafter.

#. Considering the aforesaid aspect of the matter, in my view, while deciding the question of giving compassionate appointment, the family pension income is not required to be taken into consideration.

#. Under these circumstances, the petition is required to be allowed and the matter is required to be sent back to the respondent authority to consider the question of giving compassionate appointment to the petitioner. The matter is accordingly sent back to the State Government for a fresh decision. While taking the fresh decision, the respondent authority may not take into account the family pension income received by the family of the deceased employee. Fresh decision may be taken as early as possible, and, in any case, within a period of three months from the date of the receipt of the writ of this Court. The petition is accordingly partly allowed. The writ of this order is to be sent forthwith. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)